

Message Text

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ACTION EA-09

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R 140816Z JUL 76

FM AMEMBASSY KUALA LUMPUR

TO SECSTATE WASHDC 3985

INFO AMEMBASSY BANGKOK

AMEMBASSY JAKARTA

AMEMBASSY MANILA

AMEMBASSY SINGAPORE

CINCPAC

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CINCPAC FOR POLAD

E.O. 11652: N/A

TAGS: PINT, PINS, MY

SUBJECT: GOM PROPOSES, THEN RESCINDS, NEW SECURITY MEASURES

REF: A) 75 KUALA LUMPUR A-154, B) 75 KUALA LUMPUR 7202

1. SUMMARY. DURING THE PAST TWO WEEKS, THE GOM FIRST ANNOUNCED, THEN VIRTUALLY WITHDREW, A PROPOSED CONSTITUTIONAL AMENDMENT WHICH WOULD DEPRIVE PERSONS ARRESTED ON SECURITY GROUNDS OF BASIC LEGAL RIGHTS. THIS IS A RARE INSTANCE OF OPEN GOM REACTION TO POPULAR PRESSURE, AND IT IS SEEN BY MANY AS A SIGN OF REASONABLENESS IN THE HUSSEIN ONN GOVERNMENT. END SUMMARY.

2. ON JULY 2 THE GOMANNOUNCED THAT IT WULD TABLE A CONSTITUTION (AMENDMENT) BILL IN THE DEWAN RAKYAT (LOWER HOUSE) DURING THE CURRENT SESSION OF PARLIAMENT. ONE OF THE PROVISIONS IN THE BILL AS ORIGINALLY ANNOUNCED WOULD HAVE AMENDED ARTICLE 5 OF THE CONSTITUTION TO WITHDRAW THE RIGHTS TO COUNSEL, TO KNOW THE GROUNDS OF ARREST

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AND TO PRESENTATION BEFORE A MAGISTRATE WITHIN 24 HOURS FROM ANY

PERSON ARRESTED, DETAINED OR PLACED UNDER RESTRICTED RESIDENCE UNDER ANY LAW RELATING TO THE SECURITY OF THE COUNTRY. THE PROVISION WOULD HAVE BEEN MADE RETROACTIVE TO MALAYSIAN INDEPENDENCE DAY, I.E., AUGUST 31, 1957. OTHER PROVISIONS IN THE BILL WERE RELATIVELY NON-CONTROVERSIAL.

3. ON JULY 5 THE BAR COUNCIL OF MALAYA STRONGLY PROTESTED THE PROPOSED AMENDMENT TO ARTICLE 5 BY ACKNOWLEDGING THE SERIOUSNESS OF THE SECURITY SITUATION, BUT CONSIDERING IT "MOST UNDERSIRABLE THAT ANY LEGISLATION SHOULD BE PASSED WHICH COULD IN ANY WAY UNDERMINE THE CONFIDENCE OF THE PEOPLE. IF FUNDAMENTAL LIBERTIES GUARANTEED BY THE CONSTITUTION CAN GRADUALLY BE WHITTLED AWAY BY PIECEMEAL LEGISLATION, THERE CAN BE NO ASSURANCE THAT WHAT IS LEFT MAY NOT SUFFER THE SAME FATE." ACCORDING TO A FORMER LAW PARTNER OF PRIME MINISTER HUSSEIN ONN, BAR COUNCIL CHAIRMAN RAJA AZIZ ADDRUS HAD A LONG SESSION WITH HUSSEIN AFTER THE ANNOUNCEMENT TO EXPLAIN THE COUNCIL'S CONCERNS IN GREATER DETAIL.

4. ON JULY 12 PM HUSSEIN, IN INTRODUCING THE CONSTITUTION (AMENDMENT) BILL IN THE DEWAY RAKYAT, ANNOUNCED THAT THE GOVERNMENT HAD CHANGED THE PROVISION OF THE BILL AMENDING ARTICLE 5, IN EFFECT WITHDRAWING THE PROVISION, BUT RETAINING A RESTRICTION ON THE RIGHT OF AN ARRESTEE TO BE BROUGHT BEFORE A MAGISTRATE WITHIN 24 HOURS WHEN THE LAW UNDER WHICH HE WAS ARRESTED MAKES NO MENTION OF SUCH A RIGHT. HUSSEIN DID NOT COMMENT FURTHER ON THIS PROVISION ON JULY 12, BUT HE DID SAY THAT THE GOVERNMENT HAD GIVEN DEEP AND CAREFUL THOUGHT BEFORE BRINGING THE PRESENT PROPOSED CONSTITUTIONAL AMENDMENTS BEFORE PARLIAMENT AND THAT THE PROPOSALS "ARE THE RESULT OF NOT LESS THAN TWO YEARS OF WORK."

5. DURING THE SAME SESSION OF PARLIAMENT, THE TWO MAJOR OPPOSITION MPS, LIM KIT SIANG OF THE DEMOCRATIC ACTION PARTY AND DR. TAN CHEE KHOON OF PEKEMAS, BOTH DEPLORED THE ORIGINAL PROVISION TO AMEND ARTICLE 5 AND THE AMENDMENT CONTAINED IN THE BILL AS ACTUALLY PRESENTED. IN COMPREHENSIVE COVERAGE NOT NORMALLY GIVEN TO THE OPPOSITION IN PARLIAMENT, THE NEW STRAITS TIMES CARRIED LONG STATEMENTS BY BOTH LIM AND TAN CRITICAL OF THE GOVERNMENT FOR PRESUMING TO PROPOSE CONSTITUTIONAL AMENDMENTS WHICH WOULD DEPRIVE MALAYSIANS OF THEIR FUNDAMENTAL LIBERTIES.

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SIGNIFICATLY, DURING THE SAME SESSION ARIFFIN HAJI DAUD, AN UMNO MP, ALSO QUESTIONED THE NEED TO AMEND ARTICLE 5.

6. DEBATE CONTINUED ON THE BILL IN THE JULY 13 SESSION OF PARLIAMENT, WITH A NUMBER OF MPS, BOTH GOVERNMENT AND OPPOSITION, EXPRESSING CONCERN OVER THE POTENTIAL DENIAL OF FUNDAMENTAL RIGHTS CONTAINED IN THE AMENDMENT OF ARTICLE 5, THOUGH IN LESS STRIDENT TERMS THAN ON JULY 12. PM HUSSEIN SPOKE AGAIN ON THE

BILL AND DEFENDED THE GOVERNMENT'S RECORD ON CIVIL LIBERTIES. HE SAID THAT, ALTHOUGH THE GOVERNMENT HAD A LARGE MAJORITY IN PARLIAMENT, IT WAS NOT "POWER-DRUNK" AS THE OPPOSITION HAD ALLEGED, IT HAD BEEN CAREFUL IN EXERCISING EXTRAORDINARY POWERS AND IT HAD NEVER INTENDED TO TAKE AWAY FUNDAMENTAL LIBERTIES. "MANY OF US ARE TRAINED IN LAW AND TO VALUE LIBERTY," HE SAID "WE DO NOT FIDDLE ABOUT WITH THE CONSTITUTION AFFECTING THE LIBERTY OF A PERSON. WE ARE QUITE RESPONSIBLE IN THIS." THE BILL WAS PASSED BY THE DEWAN RAKYAT BY A VOTE OF 130 TO 4.

7. COMMENT. THIS IS THE FIRST TIME IN RECENT MEMORY THAT THE GOM HAS PUBLICALLY GIVEN IN TO POPULAR PRESSURE ON A SECURITY ISSUE, OR ON ANY SIGNIFICANT ISSUE, FOR THAT MATTER. (LAST AUTUMN THE GOM MODIFIED THE ESSENTIAL (SECURITY CASES) REGULATIONS, 1975, AFTER CONSIDERABLE PUBLIC OUTCRY, INCLUDING THAT OF THE BAR COUNCIL, BUT THE MODIFICATIONS WERE MADE QUIETLY AND NOT IN OBVIOUS RESPONSE TO POPULAR OPINION. SEE REFS A AND B.) WE HAVE BEEN TOLD THAT THE ORIGINAL AMENDMENT TO ARTICLE 5, AS WELL AS MOST OF THE REST OF THE BILL, HAS BEEN UNDER CONSIDERATION FOR SEVERAL YEARS AND THAT IT IS LARGELY THE HANDIWORK OF THE LATE PM RAZAK. THE DECISION TO MODIFY THE ARTICLE 5 AMENDMENT HOWEVER, WAS MADE BY HUSSEIN PERSONALLY BECAUSE HE IS SAID TO HAVE HAD MISGIVINGS ABOUT THE CIVIL LIBERTIES IMPLICATIONS OF THE AMENDMENT. PUBLIC REACTION TO ITS ANNOUNCEMENT, ESPECIALLY THE OPPOSITION OF THE BAR COUNCIL, CONFIRMED HIS BELIEF THAT MODIFICATION WAS NECESSARY. LOCAL OBSERVERS ARE ENCOURAGED BY THIS EPISODE, BELIEVING THAT, ALTHOUGH THE GOM'S CAMPAIGN TO STRESS THE SERIOUSNESS OF THE SECURITY SITUATION CONTINUES, AS EXEMPLIFIED MOST RECENTLY AT THE UMNO GENERAL ASSEMBLY. HUSSEIN STILL FEELS CONFIDENT ENOUGH TO SHOW REASONABLENESS AND FLEXIBILITY ON A SECURITY ISSUE. UNDERHILL

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